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THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2010-30

11 **THOMAS EDWARD HART**
12 **257 S. Fair Oaks Ave. #210**
13 **Pasadena, CA 91105-2050**

A C C U S A T I O N

14 **Certified Public Accountant License No.**
15 **56052**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On or about May 11, 1990, the California Board of Accountancy issued Certified
22 Public Accountant License Number 56052 to Thomas Edward Hart (Respondent). The License
23 expired on September 1, 2008 and, effective March 29, 2009, was renewed through August 31,
24 2010. The license was then renewed until August 31, 2012. The license was in full force and
25 effect at all times relevant to the charges brought herein, with the exception of the period of time
26 when it was expired from September 1, 2008 to March 28, 2009.

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1 JURISDICTION

2 3. This Accusation is brought before the California Board of Accountancy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license during the period within which the license may be renewed,
7 restored, reissued or reinstated shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action.

9 5. Section 5050 states:

10 "(a) Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of
11 Section 5054, and in Section 5096.12, no person shall engage in the practice of public
12 accountancy in this state unless the person is the holder of a valid permit to practice public
13 accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1
14 (commencing with Section 5096)."

15 6. Section 5062 of the Code provides that a licensee shall issue a report which conforms
16 to professional standards upon completion of a compilation, review or audit of financial
17 statements.

18 7. Section 5097 provides as follows:

19 "(a) Audit documentation shall be a licensee's records of the procedures applied, the tests
20 performed, the information obtained, and the pertinent conclusions reached in an audit
21 engagement. Audit documentation shall include, but is not limited to, programs, analyses,
22 memoranda, letters of confirmation and representation, copies or abstracts of company
23 documents, and schedules or commentaries prepared or obtained by the licensee.

24 (b) Audit documentation shall contain sufficient documentation to enable a reviewer with
25 relevant knowledge and experience, having no previous connection with the audit engagement, to
26 understand the nature, timing, extent, and results of the auditing or other procedures performed,
27 evidence obtained, and conclusions reached, and to determine the identity of the persons who
28 performed and reviewed the work.

1 (c) Failure of the audit documentation to document the procedures applied, tests performed,
2 evidence obtained, and relevant conclusions reached in an engagement shall raise a presumption
3 that the procedures were not applied, tests were not performed, information was not obtained, and
4 relevant conclusions were not reached. This presumption shall be a rebuttable presumption
5 affecting the burden of proof relative to those portions of the audit that are not documented as
6 required in subdivision (b). The burden may be met by a preponderance of the evidence.

7 (d) Audit documentation shall be maintained by a licensee for the longer of the following:

8 (1) The minimum period of retention provided in subdivision (e).

9 (2) A period sufficient to satisfy professional standards and to comply with applicable laws
10 and regulations.

11 (e) Audit documentation shall be maintained for a minimum of seven years which shall be
12 extended during the pendency of any board investigation, disciplinary action, or legal action
13 involving the licensee or the licensee's firm. The board may adopt regulations to establish a
14 different retention period for specific categories of audit documentation where the board finds
15 that the nature of the documentation warrants it.

16 (f) Licensees shall maintain a written documentation retention and destruction policy that
17 shall set forth the licensee's practices and procedures complying with this article."

18 8. Section 5100 states:

19 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
20 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
21 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
22 conduct that includes, but is not limited to, one or any combination of the following causes:

23

24 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or
25 different engagements, for the same or different clients, or any combination of engagements or
26 clients, each resulting in a violation of applicable professional standards that indicate a lack of
27 competency in the practice of public accountancy or in the performance of the bookkeeping
28 operations described in Section 5052.

1
2 (d) Accounting and Auditing Continuing Education Requirement.

3 A licensee who engages in planning, directing, performing substantial portions of the work,
4 or reporting on an audit, review, compilation, or attestation service, shall complete 24 hours of the
5 80 hours of continuing education required pursuant to subsection (a) in the course subject matter
6 pertaining to financial statement preparation and/or reporting (whether such statements are
7 prepared on the basis of generally accepted accounting principles or other comprehensive bases of
8 accounting), auditing, reviews, compilations, industry accounting, attestation services, or
9 assurance services. This continuing education shall be completed in the same two-year license
10 renewal period as the report is issued. If no report is issued because the financial statements are
11 not intended for use by third parties, the continuing education shall be completed in the same two-
12 year license renewal period as the financial statements are submitted to the client.

13 (e) A licensee who must complete continuing education pursuant to subsections (c) and/or
14 (d) of this section shall also complete an additional eight hours of continuing education
15 specifically related to the detection and/or reporting of fraud in financial statements. This
16 continuing education shall be part of the 80 hours of continuing education required by subsection
17 (a), but shall not be part of the continuing education required by subsections (c) or (d).

18
19 (g) Failure to Comply.

20 A licensee's willful failure to comply with the requirements of this section shall constitute
21 cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act."

22 12. California Code of Regulations, title 16, Section 87.7, states:

23 "(a) In order to renew a license in an active status a licensee shall, within the six years
24 preceding the license expiration date, complete a continuing education course on the provisions of
25 the Accountancy Act and the Board of Accountancy Regulations, application to current practice,
26 and other rules of professional conduct. Such course shall be approved by the Board prior to the
27 licensee receiving continuing education credit for the course and shall be a minimum of 8 hours.
28 The eight hours shall be counted towards the 80 hours required pursuant to Section 87."

1 **PROFESSIONAL STANDARDS**

2 13. The standards of practice pertinent to this Accusation and the engagements at issue
3 include, without limitation:

4 A. Generally Accepted Auditing Standards (GAAS) issued by the American Institute of
5 Certified Public Accountants (AICPA). The ten general, field work, and reporting standards
6 outlined by GAAS (AU §150), which are interrelated, are discussed in the Statements on
7 Auditing Standards (SAS). The SAS are codified, by "AU" number, in the AICPA's Codification
8 of Statements on Auditing Standards. Among the SAS relevant herein, in addition to AU §150
9 which sets forth the Generally Accepted Auditing Standards are: AU §311.19 and §311.20
10 (Planning and Supervision – The Audit Plan), AU §316.83 (Consideration of Fraud in a Financial
11 Statement Audit – Documenting the Auditor's Consideration of Fraud), AU §329.01 (Analytical
12 Procedures), AU §330.04, §330.06 and §330.35 (The Confirmation Process – Definition of the
13 Confirmation Process, Relationship of the Confirmation Procedures to the Auditor's Assessment
14 of Audit Risk, and Confirmation of Accounts Receivable), AU §337.06 and §337.08 (Inquiry of a
15 Client's Lawyer Concerning Litigation, Claims and Assessments – Audit Procedures and Inquiry
16 of a Client's Lawyer), and AU §508.08 (Reports on Audited Financial Statements).

17 **COST RECOVERY**

18 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 15. Section 5107, subdivision (a), of the Code states:

23 "The executive officer of the board may request the administrative law judge, as part of the
24 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
25 found to have committed a violation or violations of this chapter to pay to the board all reasonable
26 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
27 The board shall not recover costs incurred at the administrative hearing."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

3 16. Respondent is subject to disciplinary action under Section 5100, subdivision (c), in
4 that Respondent committed gross negligence, in the performance of an audit for S.A. Kitsinian,
5 Inc. ("Kitsinian"), for the years ended December 31, 2006 and 2007. The audits of Kitsinian
6 contained extreme departures from generally accepted auditing standards and regulatory
7 requirements. The specific acts and standards of practice that were violated, that collectively
8 constitute gross negligence, are as follows:

9 a. The audit report for Kitsinian does not have a title that includes the word
10 "independent" as required by AU 508.08.

11 b. The audit report does not identify the relating Statement of Retained Earnings.

12 c. The audit report does not contain a statement that the financial statements are
13 the responsibility of the company's management.

14 d. The audit report does not identify the country of origin as the United States of
15 America (or U.S.) of the generally accepted auditing standards in both the opening and opinion
16 paragraphs, and does not contain a statement that the audit was conducted in accordance with
17 those standards.

18 e. Respondent issued an auditor's opinion for Kitsinian for the fiscal years ending
19 2006 and 2007, when, the notes to the financial statements failed to meet professional standards,
20 as follows:

21 1. Note 4. The note on "Related Party Transactions" does not disclose in
22 the note nor in the Financial Statements the amount due from related parties as of the date of each
23 balance sheet presented;

24 2. Note 8. The note on "Commitments" does not disclose future minimum
25 lease payments in the aggregate and for each of the five succeeding years. The disclosure
26 provides only four years of future minimum lease payments without an aggregate (SFAS No. 57,
27 paragraph 2);
28

1 3. Balances of the Long-term Debt are presented in the Balance Sheet, but
2 there is no disclosure on the Long-term Debt (SFAS No. 47);

3 4. There is no disclosure for cash paid for interest and income taxes on the
4 Statement of Cash Flows or in the Notes to the Financial Statements (SFAS No. 95, paragraph
5 121);

6 5. Footnote on the financial statements indicates "See Accountant's
7 Compilation Report". The footnote indicates that the financial statements were not audited, yet
8 an audit report was issued. It should be stated as "See Independent Auditor's Report".

9 6. Note 4. The note on "Related Party Transactions" states "Outstanding
10 balances relating to these sales are presented as the receivable from related party in the
11 accompanying balance sheet". Receivable from related party of at least \$630,237 for the year
12 ended December 31, 2006 (as it is presented in the Statement of Cash Flows) is not presented in
13 the Balance Sheet.

14 7. Note 7. The note on Income Taxes for 2006 does not agree to the amount
15 shown on the financial statement, in that the note provides for income taxes of \$1,209 for 2006,
16 yet provision for income taxes presented on the Statement of Income and Retained Earnings
17 shows \$800 for 2006.

18 8. Note 6. The note on Property and Equipment for 2007 and 2006 does not
19 agree with the amount shown on the financial statement, in that the note shows \$273,433 for 2007
20 and \$355,299 for 2006, yet the Balance Sheet presents \$302,892 for 2007 and \$340,218 for 2006.

21 f. Respondent's working papers did not contain a written audit plan or any
22 documentation of analytical procedures being used to plan and review the audit (in conjunction
23 with AU Section 150):

24 g. There is no documentation that Respondent sent a letter of audit inquiry to the
25 client's lawyer or obtained a response therefrom, as required by AU Sections 329.01, 337.06 and
26 337.08.

27 h. There is insufficient documentation showing that procedures were performed to
28 afford a reasonable basis for an opinion regarding the financial statements. There is insufficient

1 documentation that any audit evidence was gathered to confirm the accounts receivable balance
2 of \$2,569,603 when the total assets are \$4,511,457 as of December 31, 2007, as required by AU
3 Sections 150, 330.06 and 330.35.

4 i. Respondent failed to document his consideration of fraud in the audit, in that
5 there is no documentation showing that Respondent considered material misstatement(s) caused
6 by fraud while conducting the audit, as required by AU Section 316.83.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Repeated Acts of Negligence)**

9 17. Respondent is subject to disciplinary action under Section 5100, subdivision (c), in
10 that Respondent committed repeated acts of negligence, in the performance of an audit for
11 Kitsinian, for the years ended December 31, 2006 and 2007. The circumstances of this violation
12 are set forth in Paragraph 16 (a)-(i), above, which is incorporated by reference as though set forth
13 fully.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Violation of Professional Standards)**

16 18. Respondent is subject to discipline pursuant to Code section 5100, subdivision (g), in
17 conjunction with California Code of Regulations, title 16, section 58, in that Respondent willfully
18 violated applicable professional standards. The circumstances of this violation are set forth in
19 Paragraph 16 (a)-(i), above, which is incorporated by reference as though set forth fully.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Issue Reports in Accordance with Professional Standards)**

22 19. Respondent is subject to discipline pursuant to Code sections 5100, subdivision (g),
23 and 5062, in that Respondent issued auditor's reports that failed to conform to professional
24 standards, as more fully discussed in Paragraphs 16 (a)-(i) and 18, above, which are incorporated
25 by reference as though set forth fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Lack of Sufficient Audit Documentation)**

3 20. Respondent is subject to disciplinary action under Sections 5100, subdivision (e) and
4 5097, subdivisions (a)-(f), in that Respondent's audit documentation did not contain sufficient
5 documentation to enable a reviewer to understand the nature, timing, extent, and results of the
6 auditing procedures performed, evidence obtained, and conclusions reached, and under California
7 Board of Accountancy Regulations Section 68.2, in that Respondent's audit documentation did
8 not include an index or guide which identified the components of the audit documentation.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Lack of Continuing Professional Education Basic Requirements)**

11 21. Respondent is subject to discipline pursuant to Code section 5100, subdivision (g)
12 and California Code of Regulations, title 16, Sections 87 (d) and (e), and 87.7, in that Respondent
13 marked on his August 2006 and 2008 license renewal forms that he did not complete the required
14 8-hour Professional Conduct and Ethics (PC&E) continuing education (CE) course, and on the
15 August 2008 license renewal form, that he did not complete the required 8-hour fraud CE course.
16 Respondent failed to complete 24 hours of Accounting and Auditing (A&A) CE, eight hours of
17 fraud CE, and eight hours of PC&E CE prior to his August 31, 2008 license renewal date.
18 Respondent did not complete eight hours of PC&E CE until March 30, 2009, 24 hours of A&A
19 CE until June 5, 2009, and eight hours of fraud CE until May 20, 2009. Therefore, Respondent
20 failed to timely complete the requisite continuing professional education (CPE) specified by said
21 regulations.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Practicing Without A Valid, Unexpired Accountancy License)**

24 22. Respondent is subject to disciplinary action under Section 5050, subdivision (a), in
25 that he practiced public accountancy with an expired license from September 1, 2008 through
26 March 28, 2009. Respondent acknowledged his license expired around August 31, 2008, and was
27 not renewed until on or after March 29, 2009. However, the continuing education deficiencies
28

1 were not completed, corrected and effective until August 3, 2009. Complainant incorporates by
2 reference the allegations set forth in Paragraph 21 above, as though set forth fully.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the California Board of Accountancy issue a decision:

6 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
7 Accountant License Number 56052, issued to Thomas Edward Hart.

8 2. Ordering Thomas Edward Hart to pay the California Board of Accountancy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code sections 125.3 and 5107; and

11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED:

December 17, 2010 

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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